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RAILROAD LEGISLATION

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UNDER the limitations of time which this occasion necessarily imposes, it will be impossible to discuss, except in the most general way, the railroad problem and the system of legislation appropriate for its solution.

From unmistakable manifestations of public opinion, it must be assumed that a system of governmental ownership and operation will not, for the present at least, be accepted by the American people.

Private ownership and operation being thus the only aspect of the matter (at least for the time being) open for consideration, the question is what system of governmental regulation shall be adopted in order to make railroad transportation, privately owned, supported and operated, a success and adequate to the needs of the public.

It is unthinkable that there can be any difference of purpose in this regard on the part of any of those charged with responsibility in the matter. Whatever difference there is must be a difference as to methods. All must agree that the system of regulation, whatever it is, must insure the adequacy and efficiency of transportation, for the capacity of the instrumentalities of transportation marks the maximum capacity of productive industry, and the public will never consent that productive industry shall be artificially limited by inability to reach the markets of the world.

It is important, then, to inquire what, broadly speaking, are the essentials of an adequate and efficient transportation system supported by private capital.

In the transportation crisis which now confronts the country, there are two periods to consider and provide for:

First, the period which must intervene between the end of Federal control and the time when such a relationship is established between revenues and expenses as to make the roads self-sustaining. This may be termed the "Period of Restoration"; and,

Second, the period succeeding the Period of Restoration, which may be termed the "Permanent Period."

As to the Period of Restoration, there seems to be general concurrence in the view that a means must be devised to assure to the carriers reasonably adequate revenues during this period and to arrange for the funding of their capital indebtedness to the Government. While differences exist as to how and the extent to which this shall be done, it is hoped that a just solution will ultimately be reached.

It would be difficult for the great facts of the situation to escape intelligent attention. The carriers have, for public purposes, been deprived of the use and management of their properties for two years. During that time their organizations have been disrupted; much of the traffic normally tributary to the individual lines has been diverted to others, and the rolling stock of each carrier has been scattered from ocean to ocean. In addition to this the labor expenses alone of the carriers as a whole have been increased during these two years approximately a thousand millions of dollars a year.

Time and money will be required to restore the individual carriers to the effective enjoyment of their several properties and to the efficient organization which is essential to success. I think it may be safely assumed that these conditions will be recognized and that some provision will be made to cover this Period of Restoration. I will not refer further to this aspect of the matter, but will turn my attention to the Permanent Period, and to the principles of regulation which should be adopted by the Government as a permanent policy.

If the transportation facilities which are adequate to-day would be adequate next year and for all times in the future, the problem would be comparatively simple. In that case it would be necessary to provide only for the maintenance and operation of the instrumentalities of transportation at standards of capacity and efficiency adequate for present needs. This could be easily done. But we live in, and must think and act for, a vast and fertile land which has not yet reached the limit of its development—a land which will grow for centuries to come in both population and in the products of its industry. This means that the capacity of transportation must grow so as to at least keep pace with—in fact, it should somewhat anticipate—the growing and expanding needs of commerce.

To provide for this will require the constant input of new capital. The amount of such new capital needed to insure the ade-

quacy of transportation facilities, was estimated by the late James J. Hill at not less, for a series of years, than one thousand millions of dollars a year. The statistics of the Interstate Commerce Commission indicate an actual input for each year of the nine between 1907 and 1916 of about \$579,000,000. The sum of about \$576,000,000 was actually expended for additions and betterments by the Federal Railroad Administration during the calendar year 1918.

Without undertaking to forecast the actual amount that will be required in the future, it is manifest, if transportation facilities are to be kept measurably adequate to the needs of commerce, that many hundred millions of dollars of new money must be provided each year by private investors. They must be attracted. They can not be coerced.

The problem, therefore, of the railroads, and the problem of the public in respect to transportation, is a problem of credit.

The test, which any system of governmental regulation of privately supported transportation facilities, must successfully stand, is whether it adequately provides for and maintains the necessary railroad credit.

If it does not, it must be changed or the system of private ownership must be abandoned; if it does, the system of private ownership will succeed. Let us look, then, at the question of credit from the standpoint of the private investor, for it is with him, in the final analysis, that the system of regulation must reckon.

When, under the existing system, he is approached with the proposal that he invest in a railroad enterprise, with what is he confronted? He is offered an investment in a business as to the revenues of which he has no control. They are controlled for him by governmental authority. Nor can he rely on the control being based on business principles. The standards of regulation are set by legislative bodies sensitively alive to political considerations and limitations. This is inherent in our system of government. Legislative action will always be responsive to public opinion, no matter how uninformed or misinformed. There can be no assurance to the investor that public opinion will be always governed by a broad appreciation of business needs and conditions.

Moreover, the investor can not be certain of a uniform or consistent standard of regulation, political or business, inasmuch as a part of his revenues are regulated by the national authority, and the remainder by the several states through which the roads

may run, with their inharmonious and divergent policies. It must, I think, be admitted that, as the system of regulation now stands, there is little on the revenue side to attract the private investor.

Turning to the expense account, the investor sees that he would have far less control over his expenses than in most of the other subjects of investment open to him. Aside from the peculiarly exposed position of the railroads in labor controversies, their expenses may be added to by governmental requirements as to facilities and service—the separation of grades, the enlargement of train crews, the enlargement and improvement of stations, the equipment of cars and engines, and many other matters legitimately subject to governmental regulation; and here, again, both the national Government and the governments of the several states, all, possess powers to increase the expense account.

Thus the expense account of the business to which the private investor must be attracted, is seen to be largely beyond the owner's control.

Without referring to other deterrent conditions—such as the hope he must abandon of speculative or large returns—if he embarks in this line of investment, and the positive attractions of competing subjects of investment which are free from governmental regulation, from political interference, and which are unrestricted in opportunities, let us turn to the things that must be done, if the policy of private ownership and operation is to succeed.

From what has been said, it is manifest that it is a condition precedent to any successful system of regulation that there shall be an assurance to the investing public of revenues to the carriers adequate to attract the necessary investment. The old system of unlimited and uncontrolled discretion in the Interstate Commerce Commission will not be sufficient. Congress has recently received from every investing source the assurance that this system has not prevented an alarming decline of railroad credit. This conclusion has been reflected in each of the leading plans proposed to Congress—in the Warfield plan, by subjecting the discretion of the Commission to a fixed statutory percentage on values as a guide to rates; in the Chamber of Commerce plan, by likewise subjecting the Commission's discretion to a permanent rule of a fixed percentage on values; and in the Railway

Executives' plan, by securing from an independent board, charged with the obligation to see that transportation facilities and service are at all times adequate, a certificate of the amount of revenue that is necessary that rates shall provide. In fact, it can not be denied that the conviction is widespread, and, outside of governmental circles, universal, that something must be added to the discretion of the Interstate Commerce Commission if the confidence of the investing public is to be attracted.

The railway executives, from advices which they can not disregard, apprehend that no fixed percentage on values can be adopted which will be adequate for the needs of the carriers; and, if a fixed percentage is adopted, it will be accompanied by other conditions which can not be satisfied without undermining the very foundations of all property. They, accordingly, have not seen fit to recommend a percentage figure in the statute, but have urged, and are urging, upon the attention of Congress the necessity for a rule of rate-making which shall be precise and definite, and shall contain a statutory assurance that the proper elements in determining what revenue rates shall provide, will be properly considered by the regulatory body, and the necessary amount of revenue will be raised. We do not think that there can be a legitimate doubt that the revenues, considered in respect to average conditions in a traffic group, should be adequate to provide (1) for the expenses of operation, including labor and taxes; (2) a fair return upon the property used or held for the public service; and, (3) a surplus sufficient as a basis of credit to attract the new capital needed for the facilities and service which the commerce of the country must have. We think, further, that, in the present condition of inadequate credit under the system of unrestricted discretion in the Commission, it is necessary to provide an authority whose express statutory duty it shall be to see that the facilities and service in transportation are up to the requirements of commerce; to study the credit of the carriers with reference to their needs in order that they may be able to provide these facilities; and to certify the facts to the Commission, which should take them as their guide in rate making.

If these requirements are put in the form of definite statutory duties, we believe that the administrative authorities will faithfully administer them, and, in doing so, will be supported by an express statutory mandate in providing the revenues declared necessary by the legislature.

We believe that all revenues must come from rates; that it is as much beyond the limits of constitutional regulation to make the rates too high for the service as it is to make the rates too low; and that no rate can lawfully be permitted to be collected which it is unlawful for the carrier performing the service to retain.

If the private investor is to be attracted, it is, in our judgment, necessary to avoid taking away any part of a carrier's earnings from lawful rates. To do so would, in our opinion, be unconstitutional. It is not proposed, however, to state here the reasons for that view.

If it is constitutional, it is all the more dangerous, for, in that event, there would be no relief from it in the courts. The thoughtful investor would, of course, appreciate that the consequence of the assertion in the law of a legislative power to take all of the earnings of a road at lawful rates above a limit fixed in the discretion of this Congress, would be that the next, or a succeeding, Congress might take still more, until the point of acknowledged confiscation is reached. The railroad industry would thus be the only industry subject, at the present time, to the assertion of such a power, and the question would be whether the investing public would seek the one subject in the field of industry where the amount of its earnings at lawful rates might be taken away at legislative discretion or caprice. To engraft this principle upon the system of railroad regulation would be to implant in it the seeds of its own death, because no industry can survive when it is thus discriminated against, and thus made unattractive to the investing public. It must be realized that while what has been said is justified even from the standpoint of rates, it is equally clear that, irrespective of rates, the proposal is both indefensible and destructive. For example, let us take two roads costing exactly the same amount and doing exactly the same business at exactly the same rates. One of these roads is well managed. The money spent upon it has been used in reducing grades, in eliminating curves, in acquiring engines with greater motive power, and in other directions which promote economy. The money spent upon the other has not been wisely spent. The *net* results of the two will be entirely different—the difference not being due to difference in cost, or to difference in business, or to difference in rates, but entirely due to difference in financial management, in wisdom of conception, and in operation. One may earn precisely the amount Congress will be willing for it to retain,

the other more. The proposal is to take from the better managed road all that it earns over a given figure, and reduce it to the dead level of the other. Outside of the question of law or morals, such a proposal would absolutely destroy enterprise, initiative and good management; and these elements of advantage to the public would be thus withdrawn from the public service.

May I not digress at this point to suggest that this principle would open wide the door to socialism? If the principle can be applied to railroads, which are now regulated by public authority, what answer can be made to the effort to apply it to any subject which may hereafter be regulated, such as fuel, the manufacture of essential articles, or even money? The rate on money is even now regulated by public authority. Is it not easy for the legislative authority to declare that the interest rate is made as high as it is out of consideration for those who have little money to lend and are thus weak financially, that it is too high for the strong, and that a part of the earnings of the strong at the legal rate must be "recaptured" and taken away? If the inequality of conditions as to the possession of money can be removed, then the dream of the socialist will be realized. Is it not essential that all those who value democratic institutions—based, as they are, upon equality of opportunity and security in the possession of the fruits of labor—should make emphatic protest against the new doctrine that would take these away, and should insist that the limit of legislative authority as to railroad rates is to safeguard the justice and reasonableness of the charge, and can not, without an overthrow of our institutions, extend, by any power, except that of taxation, to the taking of any part of earnings at lawful rates? The only basis for this novel assertion of power would be that a given amount of earnings is too large according to the existing standard of legislative discretion or caprice, and for that reason alone may be taken away. The consequences of such a doctrine strike at the very foundation of orderly government with limited powers.

Returning now to the railroads, and if, as above suggested, a method of securing adequate revenues is provided, the question arises as to where these revenues are to come from. It is manifest that they should not all be provided by any one class of traffic. They should not all come from interstate commerce, nor should they all come from the state commerce of these interstate carriers. No policy can be sound which does not properly

distribute the burden of raising these revenues equitably among all the commerce of the interstate carriers, state and interstate. How can this equitable distribution be made? There can be no assurance of equity if one authority fixes one class of these rates, and another authority, or many other authorities, fix the remainder. There must be some way of bringing the two together.

The constitutional duty and power to regulate interstate commerce rests upon the national Government, and that Government should be the authority to make the distribution of the burden of raising the needed revenues over all the traffic of the interstate carriers.

We are told that this cannot be done; and that, whatever the result, some other system than that of a single and homogeneous regulation must be provided.

What greater commentary could there be on the exposed position of the railroad industry? The national Congress, in all matters within its constitutional jurisdiction, represents all the states. It is not a foreign power. It represents all the states in the matter of their foreign relations, in the matter of providing for the common defense and of making war, in the matter of the establishment of a national currency, in all matters relating to imports and exports, and in providing and maintaining a system of post offices and post roads. It is also, by the Constitution, the representative of all the states in respect to the regulation of interstate and foreign commerce. Singularly enough, of all the powers above mentioned, it is only this power of regulating commerce which has been dissented from by any section of public opinion, and yet the necessity for establishing equality of commercial opportunities among the several states was the most potent and direct influence in bringing about and establishing the Union. The situation, just prior to the adoption of the Constitution, is thus described by Mr. Fiske in his "Critical Period of American History:—"

"The City of New York, with its population of thirty thousand souls, had long been supplied with firewood from Connecticut, and with butter and cheese, chickens and garden vegetables from New Jersey. This trade, it was observed, carried thousands of dollars out of the city and into the pockets of the detested Yankees and despised Jersey men.

It was ruinous to domestic industry, said the men of New York. It must be stopped by those effective remedies of the Sangrado school of economic doctors, a navigation act and a protective tariff.

"Acts were accordingly passed obliging every Yankee sloop which came down through Hell Gate, and every Jersey market boat which was rowed across from Paulus Hook to Cortlandt Street, to pay entrance fees and obtain clearances at the Custom House, just as was done by ships from London or Hamburg; and not a cart load of Connecticut firewood could be delivered at the back door of a country house in Beekman Street until it should have paid a heavy duty. Great and just was the wrath of the farmers and lumbermen. The New Jersey legislature made up its mind to retaliate. * * * Connecticut was equally prompt. * * * By such retaliatory measures, it was hoped that New York might be compelled to rescind her odious enactment. But such meetings and such resolves bore an ominous likeness to the meetings and resolves which, in the years before 1775, had heralded a state of war; and but for the good work done by the Federal Convention (in adopting our Constitution) another five years would scarcely have elapsed before shots would have been fired, and seeds of perennial hatred sown on the shores that looked toward Manhattan Island."

It was thus the states that insisted that an authority which represented them all should regulate commerce between them; for, as stated by Chief Justice Marshall:

"The Government of the United States is the Government of all; its powers are delegated by all; it represents all and acts for all. Though any one state may be willing to control its operations, no state is willing to allow others to control them."

It thus becomes not a violation of states' rights, but is essentially a *right of each state*, to have the instrumentalities of interstate commerce regulated by a governmental authority which represents all the states, and can establish a uniform standard of commercial facilities and opportunities, and not to be controlled by the narrow or selfish policy of a sister state.

For the reasons thus imperfectly and inadequately stated, it

The House and Senate Railroad Bills

A Digest and Comparison Prepared November 17, 1919, by Richard Waterman

Secretary, Railroad Committee Chamber of Commerce of the United States

The Chamber of Commerce of the United States has prepared for the information of its members the chart printed below showing, in convenient form for comparison, the most important provisions of the two general railroad bills now before Congress. The first bill, H. R. 10463, was passed by the House of Representatives November 17, 1919, and at once sent to the Senate. The Cummings bill, S. 3286, was reported to the Senate on October 22, 1919. Since the Committee on Interstate Commerce will probably be taken up for consideration by the Senate as soon as the regular session of Congress opens December 1, 1919.

The two bills differ in many important particulars. As soon as the Cummings bill is passed by the Senate the two bills will be sent to a conference committee, which will first harmonize the conflicting provisions and then report out a conference bill that will be passed by both the Senate and the House and then be sent to the President for his signature.

The Chamber of Commerce has also prepared the following brief summary of the principles of railroad legislation approved by the business men of the country in a referendum vote that was completed July 24, 1919. The summary, after stating a principle, shows in each instance whether or not it has been incorporated in one or both of the bills.

The principles approved by the business men in Referendum 28 of the Chamber of Commerce of the United States are as follows:

(1) Adherence to the policy of corporate ownership and operation with comprehensive government regulation. (*Senate and House bills.*)

(2) Return of the roads to corporate operation as soon as remedial legislation can be enacted. (*Senate and House bills.*)

(3) Adherence to the period of Federal control as now fixed unless and until the impossibility of enacting remedial legislation within this period clearly appears. (*Senate and House bills.*)

(4) Consolidation of the roads for consolidation in the public interest, with prior approval by government authority, in a limited number of strong competing systems. (*Senate and House bills.*)

(5) Requirement that railroad companies engaging in interstate commerce become federal corporations with rights of taxation and police regulation reserved for the states. (*Senate bill.*)

(6) Exclusive Federal regulation of capital expenditures and security issues of railroads and interstate commerce, with provision for notice and hearings for state authorities. (*Senate and House bills.*)

(7) Federal regulation of intrastate rates affecting interstate commerce. (*Senate and House bills.*)

(8) Adoption of a statutory rule providing that rates in each traffic section shall yield an adequate return on a fair value of the property as determined by public authority. (*Senate bill.*)

(9) Creation of a Federal Transportation Board to promote the development of a national system of rail, water and highway transportation and the articulation of all transportation facilities. (*Senate bill.*)

SENATE COMMITTEE BILL.

The Cummings bill, S. 3286, introduced October 22, 1919, presents the recommendations of the Senate Committee on Interstate Commerce. It provides for:

Return of all railroad and transportation systems to corporate ownership and operation on the last day of the month, in which the act is approved.

Consolidation of all railroad properties in accordance with a plan previously adopted by the Federal Transportation Board, and approved by the Interstate Commerce Commission, to separate the roads into systems to be owned and operated by a distinct Federal corporation, consolidation to be voluntary if accomplished within 7 years, and, thereafter, to be compulsory.

Federal incorporation of all railroads with a requirement that each corporation shall include in its Board of Directors two representatives of classified employees, and two representatives of the Government.

Exclusive regulation and control by the Transportation Board of the issuance of stocks or bonds by railway or water common carriers; and, of the purposes to which the proceeds of the sale of such securities may be applied.

Continuation of rates that are in effect at the termination of Federal control, until changed by competent authority. If, with the Consolidation within 40 days after Federal control ceases, the rates shall be found to be excessive, and there are no filed, if approved by the Commission.

Requirement that the Commission shall divide the country into rate districts and the railway carriers into rate groups as an aid in determining the adequacy of rates in producing revenues.

HOUSE BILL.

The Bach Bill, H. R. 10463, was passed by the House of Representatives, November 17, 1919, and sent to the Senate for action. It provides for:

Return of all railroads and systems of transportation to private ownership and operation on the last day of the month, in which the act is approved.

Consolidation, unification or merger by purchase, lease, stock control, or in any other way of any two or more carriers, or the pooling of their traffic earnings, to be subject to the approval of the Commission, to the extent that the Commission indicates will be in the public interest.

Federal incorporation opposed, because it may be unconditional and would probably entail large expenses, long delays and a vast amount of litigation.

Exclusive and plenary jurisdiction of the Interstate Commerce Commission over the issuance of stocks, bonds and other securities by any common carrier, the purpose of any proposed lease and the use of the proceeds thereof.

Continuation of rates that are in effect at the termination of Federal control, until changed by competent authority.

Requirement that the Commission shall divide the country into rate districts and the railway carriers into rate groups as an aid in determining the adequacy of rates in producing revenues.

Creation of regions for incorporation, administration and rate-making purposes, opposed because it would limit competition, and would make rate-making based on average conditions of carriers within a given region an impossible task.

is submitted that, if a system of transportation supported by private capital is to succeed, it is necessary:

First, That revenues shall be provided sufficient to enable the carriers to efficiently perform their public duties, and, to that end, that a rule of rate making be established which shall express, as a plain statutory requirement, the elements that must be considered by the rate making power, and that the Commission, in making rates, shall be guided by the expert advice of a board specially charged with the responsibility of seeing that the transportation facilities and service are adequate to the needs of commerce, and with the duty of ascertaining and certifying to the Commission the amount of revenues the carriers need in order to provide them; and

Second, that the burden of providing these revenues shall be properly distributed by a single authority—which, in the nature of things, can only be the national Government—between all the traffic, state and interstate, of these interstate carriers, so that no class of traffic shall be unduly burdened, and no carrier shall be required to furnish service of any class at less than reasonable compensation.

In other words, we ask for a system of harmonious regulation, based on business principles—a system which shall not only contain the principles of correction and repression, but also the assurance of proper and adequate encouragement to those who lawfully engage in this basic and essential industry.